

REMARKS

Claims 29-41 and 43 are pending in the application. Claims 29, 37 and 43 have been amended.

The Office Action of February 10, 2006 was unclear in two respects, as Applicant noted in the last response. First, as to the groupings of claims that commences on page 2, the Groups I, II, and III variously encompass the same claims where, for example, claims 30 and 36 are encompassed by all such groups. Second, as to the choices presented on page 7, the further restriction appears to encompass a choice between a yeast strain selected from the various species of choice 1 and a promoter selected from the various species of choice 2. When viewed in this context, the election in Applicant's last response was complete; however, the notice of noncompliant amendment clarifies the nature of these choices, and so the election is now restated according to the remarks below.

Restriction Requirement

The choices presented by this election requirement are not in line with what Applicant regards as the invention, and so amendments have been made to the generic claims 29 and 37 reflecting that the amino acids encoded by the nucleic acid polymer are in a ratio that complementarily offsets a deficiency in a predetermined feed source for a target animal. This concept is discussed, for example, in the first paragraph of the detailed description and other places in the specification.

Presently at issue is an election requirement where the Examiner requires election among four groups of claims. Currently, claims 29 and 37 are generic. Applicant elects the species of Group I and traverses this requirement.

With regard to the Group IV claims, Applicant has amended Claim 43 such that it now depends from Claim 37. As amended, Claim 43 is not independent and distinct from the rest of the claims. Applicant respectfully requests that the restriction requirement with regard to Claim 43 be withdrawn.

The Examiner also requires that Applicant elects one of Groups I-IV. Applicant respectfully traverse this requirement to the extent that it can be understood. The requirement cannot be understood because, for example, it is specific as to species, i.e., poultry, beef, or swine, but claim 30 makes no mention of these species. To the extent that the Office has clarified the nature of this election requirement in the Notice of Noncompliant Amendment and a

Attorney Docket No. 413774

response must include an election, Applicant elects the species of Group I addressed to poultry including claims 30-36 and 38-39; however, specifically noting that the claims of this group are not limited to poultry.

Lastly, the Examiner requires a further election that Applicant elect one species from the claimed invention of Claims 34 and 36. Applicant traverse this further requirement and notes that the requirement is unclear. Claim 30 is, for example, generic to inducible yeast as recited in claim 34 and does not specifically mention poultry. Applicant elects the species of Group I including poultry and the claims of Group I that are generic to Group I and only further elects the species of claim 34 and specifically, if need be, *Saccharomyces cerevisiae*. Since the Notice of Noncompliant Amendment specifies that a further election must be made to identify a specific promoter of claim 36, Applicant elects GAP; however, noting with traverse that these sequences total less than ten promoters and so the requirement contradicts the practice of MPEP §803.04 which finds that it is acceptable to claim up to ten sequences in this manner.

Respectfully submitted:

Date: 6/28/06

Dan Cleveland, Jr. Reg. No. 36,106
LATHROP & GAGE, L.C.
4845 Pearl East Circle, Suite 300
Boulder, CO 80301
Tel: (720) 931-3012
Fax: (720) 931-3001